



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/723,817

11/25/2003

Steven E. Sadinsky

50833/TJD/G316

8001

23363 7590 05/06/2008
CHRISTIE, PARKER & HALE, LLP
PO BOX 7068
PASADENA, CA 91109-7068

EXAMINER

FERGUSON, MICHAEL P

ART UNIT

PAPER NUMBER

3679

MAIL DATE

DELIVERY MODE

05/06/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 14, 2008 has been entered.

Claim Objections

2. Claims 18-20 are objected to because of the following informalities:

Claim 18 (line 2) recites "swimming pole". It should recite --swimming pool--.

Claim 18 (line 3) recites "the pair of gate poles comprising". It should recite --each of the pair of gage poles comprising--.

Claim 19 (line 1) recites "The gate pole". It should recite --The pair of gate poles--.

Claim 20 (line 1) recites "The gate pole". It should recite --The pair of gate poles--.

For the purpose of examining the application, it is assumed that appropriate correction has been made.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-13, 18-20, 24 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 (lines 1-18) recites "A lightweight fence and gate for swimming pools surrounded by a deck comprising... wherein the pool deck has a plurality of sockets, each socket adapted to receive one pin".

It is unclear as to whether a pool deck having a plurality of sockets has been positively claimed as an element of the claimed lightweight fence and gate, or whether a pool deck and sockets have only been recited as intended use. Accordingly, one is unable to properly determine the metes and bounds of such claim. Claims 2-9 and 24 depend from claim 1 and are likewise rejected.

Claim 10 (lines 1-15) recites "A lightweight fence and gate for swimming pools surrounded by a deck comprising... wherein the pool deck has a plurality of sockets, each socket adapted to receive one pin".

It is unclear as to whether a pool deck having a plurality of sockets has been positively claimed as an element of the claimed lightweight fence and gate, or whether a pool deck and sockets have only been recited as intended use. Accordingly, one is unable to properly determine the metes and bounds of such claim. Claims 11-13 depend from claim 10 and are likewise rejected.

Claim 18 (lines 1-11) recites "A pair of gate poles for a gate... the gate comprising a frame having a pair of spaced upright support members, the pair of gate

poles comprising... wherein each of the pair of gate poles is attached to one spaced upright support member to allow the gate to be free to open and close”.

It is unclear as to whether a gate comprising a pair of spaced upright members has been positively claimed as an element of the claimed pair of gate poles, or whether a gate and spaced upright members have only been recited as intended use.

Accordingly, one is unable to properly determine the metes and bounds of such claim.

Claims 19 and 20 depend from claim 18 and are likewise rejected. For the purpose of examining the application, it is assumed that a gate comprising a pair of spaced upright members has only been recited as intended use within claim 18.

5. Claim 18 (lines 11-12) recites the limitation "the mesh fencing". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

7. Claims 18-20 are rejected under 35 U.S.C. 102(a) as being anticipated by Applicant's admitted prior art (specification page 1 line 28-page 2 line 7).

As to claim 18, Applicant's admitted prior art discloses a pair of poles capable of use with a gate, in a tensioned removable swimming pool fence comprising a plurality of poles, comprising a frame having a pair of spaced upright support members, each of the pair of poles comprising:

a lower end;

an insert that is received within the lower end of the pole; and

a pin that is fixed attached to the insert, the pin having a diameter smaller than that of the pole and a cylindrical portion that protrudes from the lower end of the pole, the cylindrical portion terminating at a substantially flat bottom surface;

wherein the pin is adapted to be inserted into a drilled socket in a pool deck ; and

wherein each of the pair of poles is capable of being attached to a spaced upright support member to allow a gate to be free to open and close without interference from the tension of mesh fencing (specification page 1 line 28-page 2 line 7).

Examiner notes that the use of the claimed pair of poles with a gate has only been recited as intended use within claim 18; neither a gate nor spaced upright support members have been positively claimed as elements of the claimed pair of poles. Accordingly, such claim only requires a pole capable of use with a gate.

As to claim 19, Applicant's admitted prior art discloses a pair of poles wherein the insert is made of plastic (specification page 1 line 28-page 2 line 7).

As to claim 20, Applicant's admitted prior art discloses a pair of poles wherein the pin is made of metal (specification page 1 line 28-page 2 line 7).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's admitted prior art in view of Palamarz (US 5,355,642).

As to claim 25, Applicant's admitted prior art fails to disclose a pole wherein the pin is fixedly attached to the insert by an adhesive, wherein the pin is removably insertable into the drilled socket.

Palamarz teaches a pole **58** wherein a pin **54,56** is fixedly attached to the pole by an adhesive **61**, wherein the pin is capable of being removably inserted into a drilled socket **64,66**; adhesive **61** both retains pin **54,56** within pole **58** and acts together with the pin to reinforce the pole (Figure 3, column 5 lines 29-52). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the pole disclosed by Applicant's admitted prior art wherein the pin is fixedly attached to the insert by an adhesive as taught by Palamarz in order to more securely retain the pin within the pole and to reinforce the pole.

10. Claims 1-8, 10-12 and 14-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sadinsky et al. (US 5,664,769) in view of Applicant's admitted prior art.

As to claims 1-3 and 8, Sadinsky et al. disclose a lightweight fence and gate for swimming pools surrounded by a deck comprising a plurality of poles **11**;

a mesh screen **1F** tensioned between the poles having top and bottom bindings;

a gate **G** in the fence including a frame having a pair of spaced upright support members **31,33**, a first horizontal brace **12** for spacing the upright support members and a length of mesh screen tensioned between the upright support members;

support means **21,22** capable of withstanding lateral tension forces of the screen for supporting and latching the gate, the support means comprising a first pole **21** of the plurality of poles attached to one of the spaced upright support members on one side of the gate and a second pole **22** of the plurality of poles attached to the other of the spaced upright support members on another side of the gate;

hinges **H** secured to the support means on one side of the gate; and

a latch device **M** secured to the gate and to the support means on the opposite side of the gate;

wherein the poles (capable of including a pin) are adapted to be inserted into the pool deck adjacent to the pool; and

wherein the pool deck has a plurality of sockets, each socket adapted to receive one pole (capable of receiving a pin);

wherein the support means includes on each side of the gate a pair of poles **21,22** (capable of receiving an insert and a pin), wherein the poles are inserted into the pool deck and wherein cross members are attached to both poles (Figures 2, 3 and 5).

Sadinsky et al. fail to disclose a fence and gate wherein each of the plurality of poles includes an insert that is contained within each pole and a pin that is fixedly attached to each insert, the pin protruding from the bottom of each pole; wherein the insert is made of plastic; wherein the pin is made of metal; and wherein the pins are inserted into the pool deck.

Applicant's admitted prior art teaches a fence wherein poles include a plastic insert that is contained within each pole and a metal pin that is fixedly attached to each

insert, the pin protruding from the bottom of each pole; wherein the pins are inserted into a pool deck; the smaller diameter pins enabling one to use less noticeable, smaller diameter holes, capable of receiving the smaller diameter pins, in the pool decking; the smaller holes being less noticeable when the pool is used without the fence (specification page 1 line 28-page 2 line 7). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fence and gate disclosed by Sadinsky et al. wherein each of the plurality of poles includes a plastic insert that is contained within each pole and a metal pin that is fixedly attached to each insert as taught by Applicant's admitted prior art in order to enable one to use less noticeable, smaller diameter holes in the pool decking.

As to claim 4, Sadinsky et al. disclose a fence and gate wherein the support means **21,22** includes on each side of the gate **G** a pair of gate poles **21,22** inserted into the pool deck with cross members **24,25** attached to both of the pair of gate poles (Figure 3).

As to claim 5, Sadinsky et al. disclose a fence and gate wherein the gate **G** includes a generally U-shaped frame opening upwardly with the first horizontal brace **13** secured to the lower ends of the upright support members **31,33** and a second horizontal brace **CB** secured to the upright support members on the pool side of the mesh screen **IF** at a height well below the top of the gate fabric (Figure 3).

As to claim 6, Applicant's admitted prior art does not disclose any structural or functional significance as to the particular plastic of the insert (specification page 1 line

29-page 2 line 7). Sadinsky et al. in view of Applicant's admitted prior art fails to disclose a fence and gate where the insert is polyvinylchloride.

The Appellant is reminded that the selection of a known material based upon its suitability for the intended use, wherein no structural or functional significance as to the particular material of an element is disclosed, is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fence and gate disclosed by Sadinsky et al. in view of Applicant's admitted prior art to have an insert made of polyvinylchloride as Applicant's admitted prior art does not disclose any structural or functional significance as to the particular plastic of the insert, and as such selection of a known material is a design consideration within the skill of the art which would yield expected and predictable results.

As to claim 7, Applicant's admitted prior art does not disclose any structural or functional significance as to the particular metal of the pin (specification page 1 line 29-page 2 line 7). Sadinsky et al. in view of Applicant's admitted prior art fails to disclose a fence and gate where the pin is stainless steel.

The Appellant is reminded that the selection of a known material based upon its suitability for the intended use, wherein no structural or functional significance as to the particular material of an element is disclosed, is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fence and gate disclosed by Sadinsky et al. in view of Applicant's

Art Unit: 3679

admitted prior art to have a pin made of stainless steel as Applicant's admitted prior art does not disclose any structural or functional significance as to the particular metal of the pin, and as such selection of a known material is a design consideration within the skill of the art which would yield expected and predictable results.

As to claims 10-12, Sadinsky et al. disclose a lightweight fence and gate for swimming pools surrounded by a deck comprising a plurality of poles **11**;

a first length of mesh screen **1F** tensioned between the plurality of poles defining the pool fence;

a gate **G** in the fence including a frame having a pair of spaced upright support members **31,33** and a second length of mesh screen tensioned between the upright support members of the gate; and

support means **21,22** to which the first length of mesh screen is attached for supporting the fence and gate and latching the gate including a truss structure capable of isolating the lateral tension forces of the first length of mesh screen on opposite sides of the gate, the support means comprising at least one pole **21,22** of the plurality of poles on each opposite side of the gate attached to one of the pair of spaced upright support members;

wherein the poles (capable of including a pin) are adapted to be inserted into the deck adjacent to the pool; and

wherein the pool deck has a plurality of sockets, each socket adapted to receive a pole (capable of receiving a pin; Figures 2, 3 and 5).

Sadinsky et al. fail to disclose a fence and gate wherein the each of the plurality of poles includes an insert that is contained within each pole and a pin that is attached to each insert, the pin protruding from the bottom of each pole; wherein the inserts are made of plastic; and wherein the pins are made of metal.

Applicant's admitted prior art teaches a fence wherein the poles include a plastic insert that is contained within each pole and a metal pin that is attached to each insert, the pin protruding from the bottom of each pole; the smaller diameter pins enabling one to use less noticeable, smaller diameter holes, capable of receiving the smaller diameter pins, in the pool decking; the smaller holes being less noticeable when the pool is used without the fence (specification page 1 line 28-page 2 line 7). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fence and gate disclosed by Sadinsky et al. wherein each of the plurality of poles includes a plastic insert that is contained within each pole and a metal pin that is attached to each insert as taught by Applicant's admitted prior art in order to enable one to use less noticeable, smaller diameter holes in the pool decking.

As to claim 14, Sadinsky et al. disclose a method for installing a self closing gate in a tensioned removable swimming pool fence comprising a plurality of poles **11** interconnected by flexible mesh fencing **IF** comprising:

inserting the plurality of poles (capable of including a pin) into a deck surrounding a swimming pool with the flexible mesh fencing in tension to maintain the fence in

tension, the deck having drilled sockets adapted to receive the poles (capable of receiving a pin);

the first and last poles of the plurality of poles defining a gate opening;

the first and last poles each constituting a pair of gate poles of the plurality of poles interconnected to each other to define a support structure **21,22** capable of absorbing the tension of the flexible mesh fencing;

fabricating a gate **G** including a pair of side rails **31,33**, each side rail of the pair of side rails attached to one of the first and last poles of the plurality of poles, a cross rail **12** and flexible mesh tensioned between the side rails;

hinging the first of the pair of side rails of the gate to the first of the pair of gate poles; and

installing a latch **M** between the second of the pair of side rails of the gate and the last pole of the tensioned fence;

whereby the gate is free to open and close without interference by the tension of the mesh of the fencing (Figures 2, 3 and 5).

Sadinsky et al. fail to disclose a method wherein the plurality of poles include an insert that is contained within each pole and a pin that is attached to each insert, the pin protruding from the bottom of each pole.

Applicant's admitted prior art teaches a fence wherein the poles include a plastic insert that is contained within each pole and a metal pin that is attached to each insert, the pin protruding from the bottom of each pole; the smaller diameter pins enabling one to use less noticeable, smaller diameter holes, capable of receiving the smaller

Art Unit: 3679

diameter pins, in the pool decking; the smaller holes being less noticeable when the pool is used without the fence (specification page 1 line 28-page 2 line 7). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method disclosed by Sadinsky et al. wherein the plurality of poles include a plastic insert that is contained within each pole and a metal pin that is attached to each insert as taught by Applicant's admitted prior art in order to enable one to use less noticeable, smaller diameter holes in the pool decking.

11. Claims 9, 13, 17 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sadinsky et al. in view of Applicant's admitted prior art as applied to claims 1, 8, 10, and 14 above, and further in view of Palamarz.

As to claim 9, Applicant's admitted prior art discloses a pole wherein the pin is attached to the insert by a screw (specification page 1 line 28-page 2 line 7). Sadinsky et al. in view of Applicant's admitted prior art fails to disclose a fence and gate wherein the pin is attached to the insert by an adhesive.

Palamarz teaches a pole **58** wherein a pin **54,56** is attached to the pole by an adhesive **61**; adhesive **61** both retains pin **54,56** within pole **58** and acts together with the pin to reinforce the pole (Figure 3, column 5 lines 29-52). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fence and gate disclosed by Sadinsky et al. in view of Applicant's admitted prior art wherein the pin is attached to the insert by an adhesive as taught by Palamarz in order to more securely retain the pin within the pole and to reinforce the pole.

As to claim 13, Applicant's admitted prior art discloses a pole wherein the pin is attached to the insert by a screw (specification page 1 line 28-page 2 line 7). Sadinsky et al. in view of Applicant's admitted prior art fails to disclose a fence and gate wherein the pin is attached to the insert by an adhesive.

Palamarz teaches a pole **58** wherein a pin **54,56** is attached to the pole by an adhesive **61**; adhesive **61** both retains pin **54,56** within pole **58** and acts together with the pin to reinforce the pole (Figure 3, column 5 lines 29-52). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fence and gate disclosed by Sadinsky et al. in view of Applicant's admitted prior art wherein the pin is attached to the insert by an adhesive as taught by Palamarz in order to more securely retain the pin within the pole and to reinforce the pole.

As to claim 17, Applicant's admitted prior art discloses a pole wherein the pin is attached to the insert by a screw (specification page 1 line 29-page 2 line 7). Sadinsky et al. in view of Applicant's admitted prior art fails to disclose a method wherein the pin is attached to the insert by an adhesive.

Palamarz teaches a pole **58** wherein a pin **54,56** is attached to the pole by an adhesive **61**; adhesive **61** both retains pin **54,56** within pole **58** and acts together with the pin to reinforce the pole (Figure 3, column 5 lines 29-52). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method disclosed by Sadinsky et al. in view of Applicant's admitted prior art wherein the pin is attached to the insert by an adhesive as taught by Palamarz in order to more securely retain the pin within the pole and to reinforce the pole.

As to claim 24, Applicant's admitted prior art discloses a pole wherein the pin is fixedly attached to the insert by a screw (specification page 1 line 28-page 2 line 7). Sadinsky et al. in view of Applicant's admitted prior art fails to disclose a fence and gate wherein the pin is fixedly attached to the insert by an adhesive.

Palamarz teaches a pole **58** wherein a pin **54,56** is fixedly attached to the pole by an adhesive **61**; adhesive **61** both retains pin **54,56** within pole **58** and acts together with the pin to reinforce the pole (Figure 3, column 5 lines 29-52). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fence and gate disclosed by Sadinsky et al. in view of Applicant's admitted prior art wherein the pin is fixedly attached to the insert by an adhesive as taught by Palamarz in order to more securely retain the pin within the pole and to reinforce the pole.

Response to Arguments

12. Applicant's arguments, in regards to claims 18-20 and 25, filed April 14, 2008, have been fully considered but they are not persuasive.

As to claims 1, 10 and 14, Attorney argues that:

Sadinsky et al. in view of Applicant's admitted prior art does not disclose a lightweight fence and gate *wherein the support means comprising at least one pole of the plurality of poles on each opposite side of the gate attached to one of the pair of spaced upright support members.*

Examiner disagrees. As to claims 1, 10 and 14, Sadinsky et al. disclose a lightweight fence and gate wherein the support means comprising at least one pole

21,22 of the plurality of poles on each opposite side of the gate **G** attached to one of the pair of spaced upright support members **31,33** (Figures 2, 3 and 5).

As to claims 1, 10 and 14, Attorney argues that Applicant's admitted prior art teaches away from the use of inserts and pins within gate poles, as such was perceived to decrease stability of a gate. Attorney argues that:

Applicant's admitted prior art does not disclose a fence comprising a plurality of poles each *including an insert that is contained within each pole and a pin that is fixedly attached to each insert, the pin protruding from the bottom of each pole; and wherein the pins are inserted into the pool deck.*

Examiner disagrees. As to claims 1, 10 and 14, Applicant's admitted prior art teaches a fence wherein poles each include a plastic insert that is contained within each pole and a metal pin that is fixedly attached to each insert, the pin protruding from the bottom of each pole; wherein the pins are inserted into a pool deck; the smaller diameter pins enabling one to use less noticeable, smaller diameter holes, capable of receiving the smaller diameter pins, in the pool decking; the smaller holes being less noticeable when the pool is used without the fence (specification page 1 line 28-page 2 line 7). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fence and gate disclosed by Sadinsky et al. wherein the poles include a plastic insert that is contained within each pole and a metal pin that is fixedly attached to each insert as taught by Applicant's admitted prior art in order to enable one to use less noticeable, smaller diameter holes in the pool decking.

Furthermore, Applicant's admitted prior art teaches that the use of inserts and pins within pool deck fence poles is well known within the art, independent of whether or not the use of such inserts and pins to directly support gate uprights is perceived to provide adequate stability.

As to claim 18, Attorney argues that:

Applicant's admitted prior does not disclose a pair of gate poles *wherein each of the pair of poles is attached to a spaced upright support member to allow a gate to be free to open and close without interference from the tension of mesh fencing.*

Examiner disagrees. As to claim 18, Applicant's admitted prior art discloses a pair of poles capable of use with a gate, in a tensioned removable swimming pool fence comprising a plurality of poles, comprising a frame having a pair of spaced upright support members, wherein each of the pair of poles is capable of being attached to a spaced upright support member to allow a gate to be free to open and close without interference from the tension of mesh fencing (specification page 1 line 28-page 2 line 7).

Examiner notes that the use of the claimed pair of poles with a gate has only been recited as intended use within claim 18; neither a gate nor spaced upright support members have been positively claimed as elements of the claimed pair of poles. Accordingly, such claim only requires a pole capable of use with a gate.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Ferguson whose telephone number is (571)272-7081. The examiner can normally be reached on M-F (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571)272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MPF
05/01/08

/Michael P. Ferguson/
Primary Examiner, Art Unit 3679